

AG Contract No.: KR03-0467TRN
ADOT ECS File No.: JPA 03-007
Project: TEA 019-A (011)
TRACS No.: H 6191 01C
Section: Julian Wash Natural
Park @ I-10/I-19
TRACS No.: H 6191 01C
BUDGET SOURCE ITEM NO. # 75305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF TUCSON

THIS AGREEMENT is entered into 21st April, 2004 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF TUCSON, acting by and through its MAYOR AND CITY COUNCIL, (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportation enhancements provision for historic preservation and landscaping and other scenic beautification.

4. Incident to the ongoing highway reconstruction of the Interstate 10 and Interstate 19 Interchange, it is to the mutual advantage of the State and the City to preserve an Hohokam Village archaeological site on excess State land in the vicinity of Interstate Route 10 and Julian Wash as shown on Exhibit attached hereto and made a part hereof. The parties hereto agree to preserve the cultural resources and establish an interpretive center, walkway/pathway and selective landscaping at the site, hereinafter referred to as the "Project". The State will design the Project and the City will construct and accept maintenance responsibilities. The cost of the project is estimated at \$1,050,000.00 using State and Federal Transportation Enhancement (TEA) funds.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26786
Filed with the Secretary of State
Date Filed: 04/21/04

Janice K. Brewer
Secretary of State

By: Darryl D. Greenwald

II. SCOPE OF WORK

1. The City will:

a. Acquire the necessary rights-of-way in its name required for the construction of the Project. Invoice the State upon acquisition of the private property using obligated State and Federal funds for the Project.

b. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement of bids and shall remove from the proposed right-of-way all unauthorized encroachments of whatever nature, either above or below the surface of the Project area prior to the start of construction

c. If the most cost effective method of addressing encroachments is to allow the lease to expire this is permissible.

d. The purchaser of the encroachment shall be entitled to the lease income, which will be applied to the Project

e. In the event that condemnation proceeding are necessary to purchase the private property for the Project, the City will be responsible for the condemnation proceedings using State and Federal funds.

f. Review the design documents and provide comments

g. Administer the Project under the eligibility and guidelines of the Certification Acceptance Program. Construct the Project using the State's design documents, call for bids and award the Project construction contract, make all payments to the contractor(s). Not make any changes, additions or deletions without written approval of the State.

h. Invoice the State after the award of the construction contract for progress payments for direct actual cost of the construction of the Project, plus construction, construction engineering administration costs. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the City. Submit in a timely manner proposed construction change orders to the State for approval

i. Provide if necessary all water for landscaping installation, a point of connection (POC) for the irrigation system and all water necessary to maintain the landscaping, all at the City's expense.

j. Upon completion of construction and acceptance of the Project maintain the Project and provide an annual item in its budget for perpetual and proper maintenance of all landscaping, interpretive center and walkway/pathway improvements, including, but not limited to:

- Maintaining healthy landscaping
- Operation and cost of irrigation
- Operation and cost of lighting
- Removal and treatment of weeds
- Safe access to pedestrian facilities

k. Conduct all maintenance work to meet traffic control requirements specified in the "Uniform Traffic Control Manual" by the Arizona Department of Transportation, to minimize all traffic congestion and interference with through traffic

l. Install an ADOT-provided plaque identifying the Project as part of the Transportation Enhancement Program.

2. The State will:

a. Preserve an archaeological site on about 11 acres of excess State land in the proximity of the new construction of Interstate 10 and Interstate 19 traffic Interchange for Federal Transportation Enhancement (TEA) purposes. This acreage is east of the new Interstate 19 roadway and north of Julian Wash Channel and encompasses the old Interstate 19 roadway section.

b. Prepare design plans, and other documents for an interpretative center, walkway/pathway and landscaping required for construction bidding and construction of the Project. Incorporate City review comments and upon completion of design, provides the City the design documents for the bidding and constructing the Project.

c. Be responsible for all costs associated with the Project, estimated at \$1,050,000.00.

d. Reimbursed the City for the purchase of necessary right-of-way required for the Project, using TEA Funds.

e. Make progress payments to the City after the purchase of right-of-way, and award of the construction contract for the direct actual cost of the construction of the Project, plus construction engineering and administration costs, within 30 days after receipt and approval of an invoice. The State will review claims for construction change orders as to eligibility for State and Federal funding.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this agreement may be cancelled at any time prior to the award of the Project construction contract, upon sixty (60) days written notice to the other party. It is understood and agreed that, in the event the City terminates this agreement, the State shall in no way be obligated to maintain said Project.

2. The State will reimburse the City for all costs and expenses of property acquisition whether or not the acquisition is complete as of the time of cancellation and that the payment obligation shall survive the cancellation of the agreement.

3. This agreement shall remain in force and effect until completion of the work; provided, however that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State and City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State and City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602) 712-7424

City of Tucson
Transportation Director
P.O. Box 27210
Tucson, AZ 85726-7210

10. In accordance with Arizona revised Statutes Section 11-952, (D) attached hereto is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF TUCSON

By


ROBERT E. WALKUP
Mayor

MAR 22 2004

STATE OF ARIZONA

Department of Transportation

By


SUSAN TELLEZ
Contract Administrator

ATTEST

By


KATHLEEN S. DETRICK
City Clerk

MAR 22 2004

ADOPTED BY THE
MAYOR AND COUNCIL

MAR 22 2004

RESOLUTION NO. 19758

RELATING TO TRANSPORTATION; AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUCSON AND THE STATE OF ARIZONA FOR THE JULIAN WASH PROJECT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

Section 1. The Intergovernmental Agreement between the City of Tucson and the State of Arizona, which is attached to this Resolution as Exhibit 1, is hereby authorized and approved.

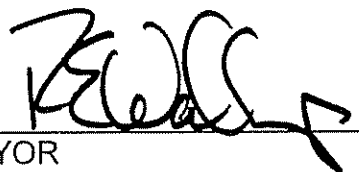
Section 2. The Mayor is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to, the aforementioned Exhibit 1, and any and all documents necessary to effectuate the above-contemplated transaction for and on behalf of the City of Tucson.

Section 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

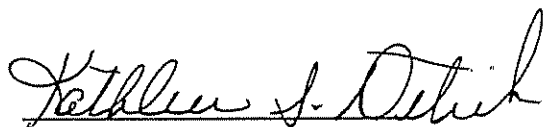
Section 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective,

an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL
OF THE CITY OF TUCSON, ARIZONA, MAR 22 2004.


MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:


CITY ATTORNEY


CITY MANAGER


TR/cds
12/23/03

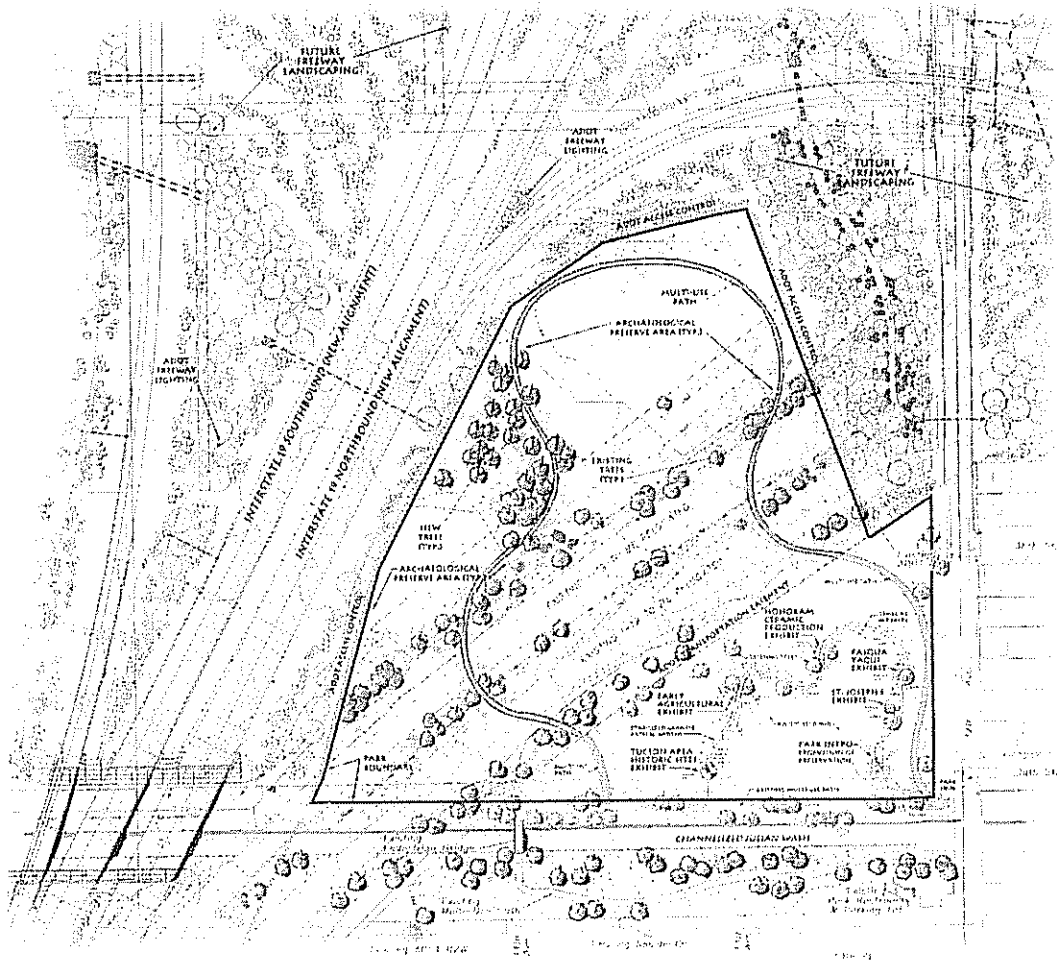
JPA 03-007

APPROVAL OF THE CITY OF TUCSON ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF TUCSON, is an agreement among public agencies which has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

Approved As To Form:

DATED this 23rd day of DECEMBER, 2003
Pr. ASST. City Attorney





TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0467-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 13 April 2004

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, reading "James R. Redpath". The signature is written in a cursive style with a large, stylized "J" and "R".

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214